

TRANSCRIPT OF THE PROCEEDINGS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 17.8.740 and 17.8.767)
pertaining to definitions and)
incorporation by reference, and)
the adoption of New Rules I and II)
pertaining to mercury emission)
standards and mercury emission)
credit allocations.)

TRANSCRIPT OF THE TELECONFERENCE MEETING

Heard at the Metcalf Building, Room 111
1520 East Sixth Avenue
Helena, Montana

October 11, 2006
12:05 p.m.

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1 WHEREUPON, the following proceedings were had:

2 CHAIRMAN RUSSELL: It's 12:05, and I'll call this
3 meeting of the Board of Environmental Review to order.
4 And what I would like to know is who all is in the room
5 with you.

6 MR. LIVERS: Mr. Chairman, members of the Board,
7 for the record, this is Tom Livers, deputy director of the
8 Department of Environmental Quality. I'm joined here by
9 board attorney, Katherine Orr; board secretary,
10 Joyce Wittenberg. Our court reporter, Cheryl Romsa, is
11 here. And then in the room at DEQ in Helena, we have
12 Director Oppen; also, chief legal counsel, John North; we
13 have additional staff, all of whom have been working on
14 the rule and are available for questions or discussion.
15 We also have several representatives across the spectrum,
16 I'd say, of interests here. Probably a couple dozen
17 people or more are in the room, maybe 15 or so in addition
18 to DEQ staff.

19 CHAIRMAN RUSSELL: Thanks, Tom. You're going to
20 get this back in a second.

21 Today we are looking at adopting a mercury rule.
22 We're amending ARM 17.8.740 and 17.8.767 and adopting or
23 considering adoption of New Rules I and II, pertaining to
24 control of mercury emissions from facilities that combust
25 coal to generate electricity.

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1 So, Tom, with that, I'll turn this back over to you,
2 and can you kind of catch us up with what --

3 RECORDING: Don Marble is leaving the meeting.

4 CHAIRMAN RUSSELL: I guess I said something to
5 offend Don.

6 MR. LIVERS: I'd be glad to, Mr. Chairman. You
7 might want to give it just a second to see if -- I assume
8 that was inadvertent on Don's part and he may be coming
9 right back.

10 I'll give a quick summary, though.

11 RECORDING: Don Marble is joining the meeting.

12 MR. LIVERS: Last week, the Department sent out a
13 copy of a rule notice you should all have -- it's also
14 posted on our website -- and our recommendation would be
15 that we work from that version, from that notice. I know
16 there has been discussion of some additional changes that
17 may be proposed and discussed today, and our
18 recommendation would be that we first have a motion to
19 adopt the rule as distributed, and then if there are --
20 and then there could be discussion on that.

21 I think there should be an opportunity for limited
22 public comment. Given the format, I think we don't have
23 an opportunity for open-ended comment, but because there
24 have been some changes that have surfaced relatively
25 recently since the close of the comment period, you might

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1 want to consider allowing some very-limited-in-time-and-
2 scope public comment, just on those newer provisions that
3 have shown up.

4 Then we'd recommend that if there are some changes
5 proposed to the rule, that we deal with them individually
6 in motions, in nested motions within the original. I'm
7 aware that we have one very minor housekeeping -- or a
8 couple of very minor housekeeping issues that we would
9 like to propose. They're basically renumbering,
10 insubstantive kind of issues. But I know that also,
11 there's some interest on the part of some of the board
12 members in some other motions, as well. And then I would
13 recommend that, again, we look at limited public comment
14 as those motions are dealt with.

15 Then, Mr. Chairman, as a final note, I know it appears
16 that we keep coming in danger of actually getting this
17 thing done, but I think if -- You know, we're assuming
18 there may be some changes today that would necessitate
19 some additional final tweaks to the record, to the
20 response to comments, 521/311 analyses. So it's very
21 likely that based on that, we would recommend a very, very
22 brief subsequent teleconference for the final approval of
23 all of those -- of the entire part of the record on Monday
24 prior to submittal. So today's motion would most likely
25 be a contingent motion that would approve the rule

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1 contingent on those final changes to the record to be
2 adopted.

3 CHAIRMAN RUSSELL: Thanks, Tom.

4 And board members, you all followed that, that we'll
5 need to reconvene after we adopt the rule to accept the
6 Department's responses to comments and the Department's
7 521 and 311 analysis. So today, we will be adopting a
8 rule, but we will not be adopting the required appended
9 documents.

10 I asked Tom earlier today, because it's a
11 teleconference, that we do all of our -- all of our voting
12 via roll call. So when I ask -- when I call for a
13 question, you'll probably hear Joyce or Tom going through
14 a roll call list; and yea or nay, I won't go through and
15 "those opposed," so you can give us a yea or a nay at that
16 point, and it will be tallied. For the record, I probably
17 should be the last one to vote, basically, because it's
18 part of the Chair's responsibilities to break ties.

19 So with that, let's proceed with the rulemaking. And
20 based on the fact that we will allow public comment, if we
21 could get a motion on the table to adopt the rule as
22 mailed, then, as Tom mentioned, through nested motions, we
23 will clean up anything the Board desires. So do I have a
24 motion to approve the rule as mailed?

25 (No response.)

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1 CHAIRMAN RUSSELL: No one wants to be notorious
2 and be the guy who makes the motion?

3 MS. KAISER: This is Heidi. I'll make the
4 motion.

5 CHAIRMAN RUSSELL: Is there a second?

6 MS. LACEY: Kim Lacey will second the motion.

7 CHAIRMAN RUSSELL: It's been moved and seconded
8 by Kim, so discussion. Board first and then we'll open it
9 up to public comment.

10 MR. LIVERS: Mr. Chairman, let me reiterate, too,
11 that that motion to adopt is contingent on the Board's
12 approval of the entire pocket on Monday, and if we could
13 have the motion reflect that, I'd appreciate that.

14 CHAIRMAN RUSSELL: Correct. It would be to --
15 Well, actually, let's back up. Since we haven't seen what
16 might come of the Department's responses to comments, do
17 we want to make it -- We can make it contingent, but we
18 can't approve it until then. So should it part of the
19 motion?

20 MR. LIVERS: Yes, I think so.

21 CHAIRMAN RUSSELL: All right. Is that acceptable
22 to you, Heidi and Kim?

23 MS. LACEY: Yes.

24 CHAIRMAN RUSSELL: That it be contingent upon
25 adoption Monday of the supportive documents?

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1 MS. KAISER: Yes.

2 CHAIRMAN RUSSELL: Comments by the Board.

3 MR. ROSSBACH: This is Bill. From a procedural
4 perspective, now if we want to make further amendments to
5 the rule as sent out, we have to vote on the existing
6 rule, or do we make, as you call it, nested motions?

7 CHAIRMAN RUSSELL: Basically, we will change the
8 language in the rule and we will vote on -- we will
9 propose any changes in the language in the rule as a
10 nested motion. If it's voted up, that would be -- that
11 would be included in the overall approval.

12 MR. ROSSBACH: So if I, for example, want to make
13 an amendment to the existing -- the rule that's now on the
14 table, I do that now?

15 CHAIRMAN RUSSELL: Well, before we vote on the
16 entire document, we would. The issue is, Bill, we might
17 have some things that were in the mailing that the public
18 may wish to comment upon or we may. So you're
19 absolutely -- What you may want to comment on would be
20 something that we want to get out there. And either way,
21 it would be nice if we could keep very discrete amounts of
22 information for public comment. So if you want to make a
23 motion, that would be great.

24 MR. ROSSBACH: Well, I guess what I was confused
25 about, what a nested motion meant, that's all.

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1 CHAIRMAN RUSSELL: Yeah. It's just a portion of
2 the overall -- I guess I shouldn't have read Roberts Rules
3 of Order in the last three years.

4 MR. LIVERS: So, Mr. Chairman, I guess my
5 recommendation would be that we could go ahead and deal
6 with board motions at this time, including discussion and
7 limited public comment on those specific motions. And
8 then prior -- once that's finished, prior to the final
9 board action, at that point, we'll probably want to open
10 it up for public comment if there are any items that are
11 recent developments that have not been dealt with in any
12 of the motions that have been offered.

13 CHAIRMAN RUSSELL: That's fine.

14 MR. LIVERS: And if you'd like, we could start
15 with our housekeeping motion.

16 CHAIRMAN RUSSELL: Let's do that. That will keep
17 things moving. I hope we're all working off the same MAR,
18 and you can just give us a page to start with.

19 MR. NORTH: Mr. Chairman, members of the Board,
20 this is John North, chief legal counsel with the
21 Department. The one housekeeping amendment that we would
22 propose would be on page 3 of the notice. Subsection (3),
23 if you'll notice that (a) and (b) both begin with verbs
24 and follow the subject, which is "the owner or operator,"
25 at the end of the first full paragraph there numbered (3).

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1 Then when you get down to (c), it's a completely
2 independent sentence, and so structurally, it doesn't work
3 to be with (a) and (b) as a (c). So what we would propose
4 in the final notice would be to make that a subsection (4)
5 and then renumber in accordance with that change, just to
6 have an appropriate numbering scheme for the rule.

7 CHAIRMAN RUSSELL: Okay. You didn't want to just
8 put "applicant" in front of the (a) and (b)? I'm just
9 kidding.

10 MR. NORTH: No.

11 CHAIRMAN RUSSELL: So did everyone follow that?
12 So it just continues through, (4) becomes (5); (5) becomes
13 (6), which is already renumbered (4), becomes (7), which
14 is renumbered (5). And (7), this goes -- (8) and (9).

15 MR. NORTH: We can take care of all of that. I
16 think if the Board would give us the latitude to change
17 that (c) and conform the other numbering, I think that
18 would work.

19 CHAIRMAN RUSSELL: All right, do I have a motion
20 to do that?

21 MR. ROSSBACH: I'll move.

22 MS. LACEY: So moved.

23 CHAIRMAN RUSSELL: It was moved by Bill, and was
24 that Heidi?

25 MS. LACEY: Kim.

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1 CHAIRMAN RUSSELL: So it's been moved and
2 seconded by Kim. All in favor signify by saying "aye."

3 MR. LIVERS: Mr. Chairman, do you want a roll
4 call on this one?

5 CHAIRMAN RUSSELL: Probably don't need one on
6 this one.

7 MR. LIVERS: Okay.

8 CHAIRMAN RUSSELL: All in favor signify by saying
9 "aye."

10 (Vote taken.)

11 CHAIRMAN RUSSELL: Opposed.

12 (No response.)

13 CHAIRMAN RUSSELL: Motion carries unanimously.

14 Next one, John.

15 MR. LIVERS: Mr. Chairman, that's all the
16 Department has in the way of motions.

17 CHAIRMAN RUSSELL: Okay, great. I guess our work
18 is done now.

19 Next thing. I had called and wondered about some
20 clarification on subsection (4) regarding -- what was just
21 renumbered (4) from (3)(c) -- this is going to be a little
22 confusing, what was (c) and now is (4). There's just a
23 little window there that I was wondering, and I asked the
24 Department if it needed to be closed, that during that
25 period where a final decision of the application is made,

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1 if mercury controls that were in place at the time of
2 application would remain in place.

3 Tom, do you want to address that?

4 MR. LIVERS: Mr. Chairman, Chuck Homer and I
5 talked about that. I think he's prepared to speak to
6 that. It's our position that the gap doesn't exist as
7 you're concerned about, but I'd like Chuck to speak to
8 that, if I could.

9 (Interruption; off the record briefly.)

10 MR. HOMER: Mr. Chairman, members of the Board,
11 for the record, Chuck Homer, from DEQ. During the time
12 period after the first compliance determination has been
13 made, and prior to establishment of an AEL if it is
14 necessary, there is a provision in the rule that protects
15 the source from enforcement action by the Department if
16 they have indeed not been able to comply with the .9 or
17 1.5.

18 The provisions to operate the control equipment that
19 were initially installed to meet the requirement, those
20 are permit conditions. You must still operate all of that
21 control equipment, operate it at its best capability. You
22 can't bypass it or not comply with the conditions of the
23 permit. So in terms of doing the best that's possible
24 with the equipment that has been installed and approved by
25 the Department in the initial permit, facilities still

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1 have to do that. As you point out, there is no limit on
2 what they -- what their limit would be during that interim
3 period. Within the time that the AEL is established, then
4 those upper limits on the AELs would go into place, and
5 certainly, they would have to comply with the AEL. But we
6 believe that having the protection of operating the
7 control equipment during that period will be sufficient to
8 protect the public.

9 CHAIRMAN RUSSELL: Okay. Thanks, Chuck.

10 Questions from the Board?

11 (No response.)

12 CHAIRMAN RUSSELL: Any other portions of the rule
13 that the Board would like to see addressed and potentially
14 modified?

15 MR. ROSSBACH: I guess I'll take the bull -- this
16 particular bull by the horns. I understand that there has
17 been some question or issue concerning the requirement for
18 BACT analysis, that there was some argument that that
19 would impose upon -- impose a requirement that later,
20 after built, BACT review would potentially allow the
21 Department to require a different boiler technology than
22 was in use.

23 I do not believe that that was the Board's intention
24 or the Department's intention, and I don't believe that it
25 is necessarily posed by the rule as it is currently

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1 drafted. However, to alleviate that particular concern, I
2 would like to propose language be included at the end of
3 section (1)(c), at the end of section (2) Roman (iv) --
4 actually, not at the end of it, but in place, language
5 that says -- or it says, "the department shall include the
6 provisions of the mercury control strategy as conditions
7 of the Montana air quality permit." I would add, comma,
8 "except that the department may not require the owner or
9 operator to install a different boiler technology than is
10 in use or contained in the final air quality permit."

11 That same language would be then put in after -- in
12 section (2)(b)(iv), where it says, "any other mercury
13 control practices used or anticipated to be used by the
14 owner or operator to achieve compliance with (1)(b),
15 except that the department may not require the owner or
16 operator to install a different boiler technology than is
17 in use or contained in the final air quality permit."

18 I would move the addition of the amendment of the
19 existing rule.

20 CHAIRMAN RUSSELL: Second?

21 MS. KAISER: I second.

22 CHAIRMAN RUSSELL: It's been seconded by Heidi.

23 MR. LIVERS: Mr. Chairman, this is Tom. Let me
24 just -- Because we've had some renumbering, let me just
25 make sure we're in agreement on the exact location of

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1 these.

2 MR. ROSSBACH: I may be wrong on the renumbering,
3 I'm sorry.

4 MR. LIVERS: No, that's fine.

5 I think the first would be at the very bottom of
6 page 2 of the version mailed out, which I think now is --
7 let's see, no, that's still (1)(c). It would be at the
8 very bottom between the semicolon and the "and," I
9 believe.

10 MR. ROSSBACH: Correct.

11 MR. LIVERS: Then the next one, I think may be
12 subject to renumbering. It's on page 3, and it would
13 be -- it would be immediately above the change we just
14 proposed, where (c) became (4). So it's down toward the
15 bottom, it's in small Roman numeral (iv). Hang on, am I
16 in the right --

17 CHAIRMAN RUSSELL: Yes. That's correct, Tom.

18 MR. LIVERS: Yeah, excuse me, it's in paragraph
19 small Roman numeral (iv), and it's right before the last
20 sentence in that paragraph, so it would be immediately
21 after (1)(b).

22 CHAIRMAN RUSSELL: So, Bill, just to -- Well,
23 before we can discuss, it was seconded, right, Heidi?

24 MS. KAISER: Yes, it was.

25 CHAIRMAN RUSSELL: Discussion.

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1 MS. SHROPSHIRE: Joe, can I say something?

2 CHAIRMAN RUSSELL: Yeah. Robin.

3 MS. SHROPSHIRE: I agree with Bill, that I
4 think based on the fact that BACT is largely -- you know,
5 includes a large economic component to it, that it wasn't
6 the intention that somebody would have to replace the
7 boiler. But I think through the BACT analysis, the
8 economics probably wouldn't make it economical for a
9 boiler to have to be switched. So I would agree that -- I
10 think probably the language isn't necessary, but I'm okay
11 with that change.

12 And I would just add that, you know, through the
13 record, we've established -- and from DEQ and also the
14 comments we received, that local deposition is likely
15 occurring, and especially in light of the Steubenville
16 study that's just recently been published. I would just
17 caution folks that that essentially says, in my opinion,
18 that the CAMR rule is probably going to get thrown out.
19 And so when that happens, a MACT analysis, which is not
20 based on economics, would be required. And at that point,
21 mercury would then be treated as a hazardous pollutant.

22 And so I think in some ways, the language isn't
23 necessary, but I would also -- you know, I think in terms
24 of budgeting for these projects, the idea that a MACT
25 analysis is likely going to be necessary in the future

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1 should be considered.

2 So that's my comment. Thanks.

3 CHAIRMAN RUSSELL: Thanks, Robin.

4 Any other comments?

5 MR. LIVERS: Mr. Chairman, this is Tom. On
6 behalf of the Department, we would agree with the
7 contention that Ms. Shropshire stated, that the language
8 is not necessary given that I think we've been pretty
9 clear in terms of how the Department does apply BACT
10 analysis. We don't think it hurts anything to have it in,
11 and we're certainly open to that.

12 I want to clarify one point with respect to this,
13 though, in that the specific language proposed speaks to
14 technology in use or contained in a final air quality
15 permit application, and it's silent on whether we have the
16 ability to require changes in technology on proposed uses
17 in proposed permit applications rather than final permits.
18 We would take that to continue applying BACT the way we
19 have historically done that, and that is that, you know,
20 our purview and expertise is with control technology and
21 not with the specific engineering within any given plant.
22 And so whether it's in an application or in a final
23 permit, we would not apply BACT from the standpoint of
24 assuming we have either the authority or the expertise to
25 require modification in boiler technology.

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1 CHAIRMAN RUSSELL: Well, Bill -- this is Joe --
2 was it your intention to have this not apply to boiler
3 technology for proposed plants?

4 MR. ROSSBACH: I'm comfortable with the language
5 as I proposed it. I understand Tom's -- I guess I would
6 recommend that that be a part of any amended comments or
7 responses that are included in my comments.

8 CHAIRMAN RUSSELL: Do you believe your amendments
9 address proposed plants?

10 MR. ROSSBACH: No. I'm leaving that as an open
11 question. I had not intended -- Proposed plants before
12 the air quality permit is actually issued, I think is an
13 open question.

14 MS. SHROPSHIRE: Just for clarification --

15 MR. ROSSBACH: I'm uncomfortable going that
16 broadly. I understand the Department's position, and I'm
17 comfortable with their position. This is as far as I want
18 to amend the statute -- the proposed rule.

19 MS. SHROPSHIRE: Can I get some -- My
20 understanding of this is for an AEL, not fully for a BACT
21 analysis for a new plant. Is that true?

22 MR. ROSSBACH: Right. It would be for a new
23 plant -- That's what the Department is saying, is that
24 they don't -- They take the position that they do not have
25 the expertise to look in a BACT analysis, evaluate or

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1 require changes in boiler technology on a proposed plant,
2 that therefore, it is not done and would not be done.

3 Our position is -- I want to make clear that once a
4 project has gone far enough that it has gotten an air
5 quality permit, that is, it has proposed a concrete plan,
6 engineering design with a set of control technologies,
7 that once that has gotten an air quality permit, then
8 boiler technology revision is off the table from a BACT
9 point of view.

10 MS. SHROPSHIRE: Or may be.

11 MR. ROSSBACH: Yes.

12 Before that, I think it's an open question. The
13 Department takes the position that they do not do that,
14 and I understand that. That should be a part of the
15 comments that are included in our rulemaking. But I do
16 not feel that we need to go that far. That's why I
17 amended the rule the way I did.

18 MS. SHROPSHIRE: And I agree with you. So it's
19 for modification.

20 MR. ROSSBACH: Correct.

21 MS. LACEY: Or perhaps for the 10-year review.

22 MR. ROSSBACH: It's definitely for the 10-year
23 review. Clearly, it's for the 10-year review, but for any
24 modification -- any major modification of a plant which
25 requires a new air quality permit, it would also be

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1 applied as well.

2 As far as I'm concerned, once they've gotten that
3 initial air quality permit, then any further BACT analysis
4 should not include a revision or a requirement that the
5 boiler technology be changed. I think it's -- I think at
6 that point, that we live with the existing boiler
7 technology, whether it's built or not. Once we have
8 approved an air quality permit, then that boiler
9 technology is off the table in terms of a BACT analysis.

10 MS. SHROPSHIRE: I agree.

11 CHAIRMAN RUSSELL: And I agree with that also. I
12 just -- What happens in 2013 when a new plant is proposed?
13 Does BACT include addressing boiler technology?

14 MR. ROSSBACH: Well, the Department says it does
15 not. It's my position that's an open question. I do not
16 want this rule to limit the Department's review at an
17 initial stage.

18 CHAIRMAN RUSSELL: You know, quite frankly, I
19 like what you've proposed for existing plants. I just
20 wonder if we're not doing the best we can to protect
21 public health if we don't address just what SME did. They
22 went through the process and said, hey, we're going to use
23 CFB. CFB is a proven technology; it's not as uncertain as
24 people would like to make it out to be; and they, through
25 their process, have decided they're going to do that. And

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1 we know that the potential mercury controls out of the
2 boiler technology are a hell of a lot better than a
3 pulverized coal technology. Pardon my language. So --

4 MR. ROSSBACH: But that's what I'm saying, Joe.
5 Once they have gotten past and gotten -- put the design on
6 the table that includes the existing technology and the
7 Department has, with that technology, granted them an air
8 quality permit, then I don't think we should be -- the
9 Department should have the ability to go back and make
10 them change it. But up until that point, it's my view
11 that I think that that should be an option for the
12 Department. The Department says it is not. That's why
13 I've limited the scope of this exception to after an air
14 quality permit has been obtained with a given boiler
15 technology.

16 But I agree with you, Joe, that if somebody comes in
17 at a certain point and mentions technology, I think the
18 Department should be able to impose requirements on them.
19 The Department is taking the position that it doesn't.
20 That's why I'm limiting the exception to BACT to after the
21 first air quality permit is obtained.

22 MR. LIVERS: Mr. Chairman, this is Tom. The only
23 other thing I guess I'd weigh in on is, we would believe
24 that there are other ways to force technology and that
25 that's through limits, and changing those limits would

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1 force that technology. And we believe that the limits in
2 this rule will already take care of some of the problems
3 that have been hypothetically posed.

4 CHAIRMAN RUSSELL: Nothing like a good rule, Tom.

5 MR. MARBLE: This is Don. I have a question for
6 Bill.

7 MR. ROSSBACH: Yeah.

8 MR. MARBLE: With your amendment in, it would
9 still be -- they would be able to look at modified boiler
10 operating practice and technology?

11 MR. ROSSBACH: Operating practices certainly
12 would be considered, yes, would be on the table. I agree.

13 MR. MARBLE: Okay, thank you.

14 CHAIRMAN RUSSELL: All right. Any further
15 clarification?

16 (No response.)

17 CHAIRMAN RUSSELL: Hearing none, all those in
18 favor, signify by a roll call vote.

19 MR. LIVERS: I'll go ahead. I've got a list in
20 alphabetical order, and I'll put you last, Mr. Chairman.

21 Ms. Kaiser.

22 MS. KAISER: I vote for the amendment.

23 MR. LIVERS: Ms. Lacey.

24 MS. LACEY: Yes.

25 MR. LIVERS: Mr. Marble.

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1 MR. MARBLE: Yes.

2 MR. LIVERS: Mr. Rossbach.

3 MR. ROSSBACH: Yes.

4 MR. LIVERS: Ms. Shropshire.

5 MS. SHROPSHIRE: Yes.

6 MR. LIVERS: Mr. Skunkcap.

7 MR. SKUNKCAP: Yes.

8 MR. LIVERS: Chairman Russell.

9 CHAIRMAN RUSSELL: Yes.

10 MR. LIVERS: Motion is passed anonymously, as I
11 got it.

12 CHAIRMAN RUSSELL: Just before we move on, does
13 anyone want to address the issue of proposed plants after
14 2010?

15 MR. LIVERS: Mr. Chairman.

16 CHAIRMAN RUSSELL: Tom.

17 MR. LIVERS: I failed to ask for public comment
18 prior to that vote. I apologize for that. I think it
19 would be important to take it now anyway.

20 CHAIRMAN RUSSELL: Yes.

21 MR. LIVERS: And it can always be revisited if
22 necessary.

23 CHAIRMAN RUSSELL: Well, let's do take limited
24 public comment. Because I think -- Well, I can't think of
25 too many people out there that are going to challenge the

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1 Board's position on this, but let's take the comment. So
2 if anyone does, they need to go to wherever the Department
3 has set up a mike and speak clearly, make sure we get your
4 name.

5 MR. LIVERS: Would you like me to first ask
6 whether there's anyone here -- since we probably have the
7 largest contingent, see if anybody here would like to
8 speak to that?

9 CHAIRMAN RUSSELL: That's fine.

10 MR. LIVERS: Is there anyone here in the audience
11 who would like to address this?

12 We have at least one person coming forward.

13 MR. BERRY: Mr. Chairman, my name is Leo Berry,
14 I'm representing Great Northern Power Development. I'd
15 like to have the language read back -- it was hard to
16 understand Mr. Rossbach, as he was cutting out, so I
17 didn't understand exactly what the language said -- before
18 I comment. Can someone do that for me?

19 MR. LIVERS: Mr. Rossbach, do you have that
20 language in front of you? That might be the best.

21 (Static.)

22 MR. LIVERS: I think I've got -- I think I can
23 come close. The language I had being inserted in two
24 places in the rule, I'll start with the existing language
25 at the first insert, just to give it some context: "The

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1 department shall include the provisions of the mercury
2 control strategy as conditions of the Montana air quality
3 permit." Then this may not be verbatim, but I think it's
4 close. The new language would start, "except the
5 department may not require the owner or operator to
6 install a different boiler technology than is in use or
7 contained in the final air quality permit."

8 CHAIRMAN RUSSELL: That's what I got.

9 MR. LIVERS: And that would be inserted in the
10 two AEL analyses sections.

11 MR. BERRY: Mr. Chairman, Great Northern Power
12 read carefully the responses to comment on this particular
13 issue, found on page 48 in the response to comments, and
14 based on that explanation, Great Northern Power was
15 comfortable with this particular portion of the rule. If,
16 in any way, this amendment changes the interpretation of
17 the rule by the Department or the Board as to who selects
18 the boiler technology, then we would object to this
19 amendment. If it does not, then we do not.

20 CHAIRMAN RUSSELL: Leo, I think that you guys are
21 on the right page, because it doesn't address boiler
22 technology for proposed plants, as I suggested I would
23 like to see happen.

24 Anyone else want to comment?

25 MS. SHROPSHIRE: I guess maybe discuss this to

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1 make sure that I'm understanding.

2 CHAIRMAN RUSSELL: Hold on, Robin.

3 MS. SHROPSHIRE: Okay, sorry. Public comment.

4 MR. LIVERS: We do have another member of the
5 public here ready to comment.

6 CHAIRMAN RUSSELL: All right.

7 MR. GREGORI: My name is Tim Gregori. I'm with
8 Southern Montana Electric G&T. First of all, I support
9 the Board's efforts to try to address the issue of boiler
10 technology. I would just simply say that I think in the
11 review of where it is appropriate to add that language,
12 the consideration be given also to sections (8) and (9) to
13 make sure that it is consistent all the way through the
14 rule.

15 Thank you.

16 CHAIRMAN RUSSELL: Old section (8) or new section
17 (8)?

18 MR. GREGORI: To the best of my recollection --
19 Tim Gregori again -- renumbered sections (8) and (9).

20 CHAIRMAN RUSSELL: Okay.

21 Do you see that, Bill?

22 MR. ROSSBACH: I'm kind of confused about (8) and
23 (9).

24 MR. LIVERS: I assume we're speaking for the
25 sections that would show up in your printed version on

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1 page 5 that formerly -- that were initially (6) and (7),
2 had been renumbered (7) and (8), and then as of today's
3 action, became (8) and (9). So they'd be the paragraphs
4 starting about a fourth of the way down the page that, by
5 the printout, says section (7).

6 CHAIRMAN RUSSELL: Correct. And there are --

7 MR. ROSSBACH: That would be my -- I'm sorry,
8 that would be my intention.

9 CHAIRMAN RUSSELL: That would be other BACT
10 analysis.

11 MR. ROSSBACH: Any place where -- I would just go
12 through and any place where there is a requirement of BACT
13 analysis, that that language should be included.

14 CHAIRMAN RUSSELL: We'll actually probably do
15 that by motion.

16 Tim, did you have anything else?

17 MR. LIVERS: No, he does not.

18 CHAIRMAN RUSSELL: Anyone else? Is there people
19 in Billings?

20 MR. LIVERS: Mr. Chairman, Mr. Berry is still at
21 the podium, too, if that's all right.

22 CHAIRMAN RUSSELL: I guess it is.

23 MR. BERRY: Mr. Chairman, I apologize. I think
24 this process points out the difficulty of dealing with
25 amendments with not having seen the language and being

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1 able to figure out how they are incorporated in a very
2 complicated process and issue. And to that extent, I
3 think I would like to see the Board include something in
4 the response to comments that the boiler technology to be
5 used is part of the application process and is not
6 selected by the agency or the Board, and to have that
7 clarified.

8 I think we had it clarified in the response to
9 comments found on page 48, and I'd just like to make sure
10 that the Board asks the Department to, if necessary, amend
11 those response to comments to ensure that that is still
12 the case, that it's consistent with the existing response
13 to comments, that we have not changed anything there.
14 Because I'd hate to have the Board adopt a rule here that
15 we inadvertently create some opportunities for mischief.

16 Thank you.

17 CHAIRMAN RUSSELL: Any further comments?

18 (No response.)

19 CHAIRMAN RUSSELL: Anyone in outlying places that
20 want to comment? Anyone from Billings?

21 (No response.)

22 CHAIRMAN RUSSELL: Robin, we're back to you,
23 then.

24 MS. SHROPSHIRE: Well, I just wanted to -- I
25 thought we had clarified that, but maybe not. This does

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1 not include new facilities.

2 CHAIRMAN RUSSELL: Well, not at this point it
3 doesn't.

4 MR. LIVERS: Mr. Chairman, there are probably, in
5 our opinion, a couple of open questions on the table now
6 as a result of that comment. One is the request that that
7 provision be added into the sections that are currently
8 numbered (8) and (9), and we're taking a quick look to see
9 how we would recommend that be accomplished, and we can
10 come up with, in a few minutes, some language to that
11 effect. And then I guess the question as to whether to
12 make any modifications to the response to comments on
13 page 48.

14 CHAIRMAN RUSSELL: Right.

15 Back on the other questions that are posed, newly
16 proposed plants, I think we need to get a resolution on,
17 but whether we do or not, the comments will be modified
18 based on what's in the rule and hopefully based on public
19 comment, board comment, and the science. And then looking
20 at these -- Sometimes I wonder if we shouldn't just have a
21 definition of BACT that applies to this rule.

22 MR. LIVERS: Mr. Chairman, if it would help to
23 resolve one of the issues, I think we've got the locations
24 for inserting this same language into those other
25 two paragraphs.

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1 CHAIRMAN RUSSELL: Can you give us those?

2 MR. LIVERS: Sure.

3 Okay, if you'll look on your printed version, page 5.

4 CHAIRMAN RUSSELL: Isn't there one on page 4?

5 MR. LIVERS: No. I think 5 and 6, it looks like
6 is where they'll surface. So we're in the paragraph that
7 was (6), became (7), and is now (8), and right about in
8 the middle of the page is some underlined new language.
9 And the second sentence of the new language reads, "A
10 revised alternative mercury emission limit must meet the
11 requirements of (4)," and then we would insert the
12 language -- the same language that was just inserted in
13 the other two locations, "except the department may not
14 require the owner or operator to install a different
15 boiler technology than is in use or contained in the final
16 Montana air quality permit." So that would be the place
17 it would be inserted into what's now section (8).

18 CHAIRMAN RUSSELL: That's not -- and then it
19 would state, "or constitute best available control
20 technology"? Wouldn't it go after that, "except that" --

21 MR. LIVERS: Well, Mr. Chairman, what we're doing
22 here in the other place is qualifying the AEL analysis.

23 CHAIRMAN RUSSELL: Right. But aren't we
24 qualifying what BACT applies to? "A revised alternative
25 mercury emission must meet the requirements of (4) or

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1 constitute" BACT "technology, except," and then put in
2 your exception.

3 MR. LIVERS: Well, Mr. Chairman, some of our
4 concerns -- and I'll turn this over to Mr. Homer in a
5 second. Concerns we have is having unintended
6 consequences outside the scope of the mercury rule. If we
7 begin to qualify BACT in this rule, it could raise
8 questions and ambiguities in the broader universe of BACT
9 analysis and BACT application. And while something may be
10 fine for the purpose of this specific rule, it could have
11 significant unintended consequences elsewhere, and that's
12 what we're trying to avoid with this. And Mr. Homer is
13 also available to speak on this.

14 CHAIRMAN RUSSELL: Yeah. We qualify what BACT
15 applies to, though?

16 MR. HOMER: Mr. Chairman, Chuck Homer. I guess
17 I'd like to reiterate the way Tom just stated it. If it
18 is the Board's intent to have this apply in this instance
19 to establishing mercury limits for EGUs, then it would be
20 our suggestion to put it in those areas where we're
21 talking about mercury limits, either in the initial limit
22 or in the AELs or revised AELs or those areas. If you
23 place it near BACT or make it seem that the BACT process
24 has been changed by this rule, that is going to create, in
25 our view, argue severe litigation questions throughout the

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1 rest of the program.

2 So I guess that's the question: Is the Board
3 intending to change BACT or intending to change the way
4 that mercury emission limits are established for EGUs?

5 CHAIRMAN RUSSELL: I thought we were trying to
6 define how BACT would be applied.

7 MS. KAISER: And I thought we were just trying to
8 clarify the review process to make sure that a new boiler
9 technology wasn't going to be forced on somebody after a
10 permit is in hand.

11 CHAIRMAN RUSSELL: So, Heidi -- But Bill, isn't
12 that how BACT is applied?

13 MR. ROSSBACH: Sorry, Joe, I couldn't hear you.

14 CHAIRMAN RUSSELL: Well, isn't that how BACT is
15 applied, not how the -- Isn't it a BACT process and not a
16 permit process?

17 MR. ROSSBACH: That's what my view of it is. I'm
18 having a hard time -- Because I don't know the whole
19 pollution control program that the Department is concerned
20 about, I somewhat will defer to them in terms of where the
21 language should be placed. That's a bigger picture issue
22 that I'm not as familiar with as they are. The language,
23 for me, is the important point, and where it goes in, I
24 will defer to Chuck on that nine times out of ten, I
25 promise you.

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1 MR. MARBLE: This is Don Marble, I agree, I'll
2 let Chuck decide.

3 MR. LIVERS: Mr. Chairman, if you'd like, I have
4 the other location. And it's the same issue.

5 CHAIRMAN RUSSELL: I see it, too.

6 MR. LIVERS: It's going to be at the very top of
7 page 6. The sentence starts at the bottom of page 5:
8 "The department shall establish a revised mercury emission
9 limit in a Montana air quality permit that meets the
10 requirements of (4)," and then we would insert the
11 language again, the same language in that same spot. And
12 it is the same issue that -- for the same reasons, we
13 would put it ahead of BACT and have it apply to the AEL
14 analysis.

15 CHAIRMAN RUSSELL: But not to BACT.

16 MR. LIVERS: Correct.

17 The concern -- Just maybe to reiterate and slightly
18 elaborate, the concern we have is not within this rule,
19 per se. Is it that if we have, in one place, added
20 qualification to BACT, that opens an ambiguity and a
21 litigation risk everywhere else where we're dealing with
22 BACT. In other words, if there was -- felt that there was
23 a need to define it this way, it suggests some uncertainty
24 on that very issue in other applications of BACT. The
25 reality is, the Department does not cross into

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1 modification of boiler technology in its application of
2 BACT. But -- so we truly don't believe it's a risk. But
3 if we qualify it here, then we're concerned that we open
4 it to litigation in the broader universe.

5 CHAIRMAN RUSSELL: You're talking about BACT as
6 it applies to NOx, SO2, particulates, to everything.

7 MR. LIVERS: Yeah, and to facilities other than
8 EGUs. This is a fairly small slice. It's an important
9 one, but the universe of BACT analysis is considerably
10 bigger.

11 MR. ROSSBACH: I would move the additional --
12 addition of the language in the two other points.

13 MS. LACEY: Kim Lacey, second.

14 CHAIRMAN RUSSELL: It's been moved and seconded.
15 Any other further discussion?

16 (No response.)

17 CHAIRMAN RUSSELL: Okay, comments by the Board,
18 hearing none, last comments by the public before we take
19 action.

20 MR. LIVERS: We have comments here in Helena,
21 Mr. Chairman.

22 CHAIRMAN RUSSELL: All right.

23 MR. GREGORI: This is Tim Gregori again, and it's
24 almost like we're measuring with a micrometer where to cut
25 it with a chainsaw, because really, the issue that is at

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1 stake here, if you're looking at BACT, by putting the
2 language in either spot -- I mean, I can understand why
3 the Department wants to put it where they say that they
4 think need it, but if the language came afterwards,
5 changing a boiler wouldn't pass the economic test, as the
6 Department said earlier. So, I mean, they're kind of
7 arguing against themselves on their earlier comments with
8 regard to the clarity of BACT already.

9 So I really don't see placing the language at a later
10 spot in that phrase is going to change the intent of what
11 you're trying to accomplish. We can live with it this
12 way, but we think it causes more confusion than it
13 resolves.

14 Thank you.

15 CHAIRMAN RUSSELL: I'm with Tim.

16 MS. KAISER: Me, too.

17 MR. LIVERS: We have another comment here,
18 Mr. Chairman.

19 CHAIRMAN RUSSELL: All right.

20 MR. BERRY: Mr. Chairman, again, Leo Berry. I'm
21 really struggling with trying to follow what's going on
22 here. I think the Department and Robin Shropshire
23 correctly characterized the position early on, and that
24 is, this amendment in its entirety is not needed. It is
25 confusing the matter. We don't know for sure what its

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1 consequences are. And I would recommend the Department --
2 or the Board withdraw the amendment, adopt the rule as is.
3 And if you want to come back and make some modifications
4 to it later, do it in a more rational and logical process
5 than the one we're in right now.

6 Thank you.

7 CHAIRMAN RUSSELL: Bill.

8 MR. ROSSBACH: No comment. You know, I guess I'm
9 irrational.

10 MS. SHROPSHIRE: John, I want to -- Can I
11 interrupt for just one second? I have class starting now.
12 Can we just hold on for two minutes? I just have to run
13 and tell them that I'm going to be late.

14 CHAIRMAN RUSSELL: About an hour.

15 MS. SHROPSHIRE: Yeah. So can you just -- can
16 you give me two minutes to run down the hall, please?

17 CHAIRMAN RUSSELL: That's fine.

18 MS. SHROPSHIRE: Okay. Sorry about that. I'll
19 be right back.

20 CHAIRMAN RUSSELL: Does anyone need to do
21 anything for two minutes?

22 Just for kind of logistics, we have probably an hour,
23 right, Tom?

24 MR. LIVERS: Mr. Chairman, that's correct. We
25 reserved the lines for two hours, so we've got one more

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1 hour remaining.

2 (Off the record briefly.)

3 MR. LIVERS: Mr. Chairman, this is Tom. Just a
4 reminder to the board members, for the sake of the record,
5 maybe not each individual time, but as you start in, if
6 you could re-identify yourself, that would help our
7 reporter here.

8 CHAIRMAN RUSSELL: Good point.

9 MS. SHROPSHIRE: Robin is back in the building.

10 CHAIRMAN RUSSELL: So let's keep moving. There
11 is a -- There isn't a motion. There was a concern by Leo
12 about putting all this in, but there was also a comment by
13 Tim if we're going to do it in two places, we ought to do
14 it in the other two places, which would be in sections (8)
15 and (9). A motion to add that language prior to the
16 BACT --

17 MR. LIVERS: Mr. Chairman, I think we do have a
18 motion on the table. I believe Bill made the motion and I
19 think Heidi seconded it.

20 CHAIRMAN RUSSELL: For (8) and (9)?

21 MR. LIVERS: I think so.

22 MS. LACEY: Kim Lacey seconded it.

23 MR. LIVERS: Or Kim. I'm sorry, Kim.

24 CHAIRMAN RUSSELL: Is there any further
25 discussion on this?

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1 MS. KAISER: I have a question. This is Heidi.

2 CHAIRMAN RUSSELL: Heidi.

3 MS. KAISER: Maybe this is for Chuck or for Tom.
4 Chuck, you had said that including this language, it may
5 cause a problem? Could you maybe recap that for me? Did
6 you mean in all areas we talked about, or in only the last
7 two parts of the rule, (7) and (8)?

8 MR. HOMER: Mr. Chairman, Ms. Kaiser, as stated
9 before, the Department believes that this language isn't
10 necessary because it's clear as it is. But if the
11 language is to be added, it should be made clear that it's
12 meant to apply only to establishing mercury limits for
13 EGUs either as part of the initial limit or as part of
14 AELs.

15 The problem that I was describing, if there is any
16 perception that this would be modifying our BACT process,
17 which is used in our entire permitting program for all
18 facilities and all pollutants, that could create severe
19 implementation, confusion, and litigation risk.

20 MS. KAISER: Okay. Okay, thank you.

21 MS. SHROPSHIRE: This is Robin. I don't know who
22 this should go to. I don't know, maybe, Bill, to you,
23 but -- I mean, do you think it would be preferable to
24 remove the language or to -- is it complicating it further
25 to clarify that this in no way substitutes for the BACT

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1 process, or something along those lines? I don't know.

2 CHAIRMAN RUSSELL: We're not dealing with BACT
3 right now.

4 MS. SHROPSHIRE: Oh, then I'm confused. I was
5 just trying to address Chuck's concern that it may be
6 perceived as modifying BACT. Is that intending that?

7 MR. LIVERS: Mr. Chairman, Ms. Shropshire, this
8 is Tom. I think if the language goes in the locations
9 that we've identified, that we feel that's a manageable
10 issue; we're not overly concerned. I mean, the issue is
11 out there, but I think it can work the way we've
12 identified.

13 MS. SHROPSHIRE: Okay, thank you.

14 CHAIRMAN RUSSELL: So it modifies the AEL
15 process, it does not modify the BACT process.

16 MR. HOMER: Mr. Chairman, this is Chuck Homer
17 again. For just the last bit of qualification, we are
18 saying that it is applying to existing facilities and
19 facilities with final permits, but it is being left open
20 as facilities that are being proposed.

21 CHAIRMAN RUSSELL: I didn't catch the last part
22 of your last sentence.

23 MR. HOMER: Excuse me, I'll state it one more
24 time. That this language is intended to state that boiler
25 technology will not be changed by the Department for

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1 facilities that are in use, that have commenced operation,
2 for facilities that have a permit, a final air quality
3 permit that describes the boiler technology they will be
4 using. But it is intended to leave it up in the air
5 whether or not the Department could change boiler
6 technology for facilities that have not yet received the
7 final air quality permit. That's the concern that the
8 Department has, you know, outside the BACT problem, is
9 that we need to know what is intended by that and how the
10 responses to comments are intended to be stated.

11 CHAIRMAN RUSSELL: Thank you, Chuck. This is
12 Joe. Basically, are you asking the Board clarify their --

13 MR. LIVERS: Mr. Chairman, you're cutting out,
14 I'm sorry.

15 CHAIRMAN RUSSELL: Are you asking the Board to
16 clarify their position in the rulemaking process on newly
17 proposed plants after 2010?

18 MR. HOMER: Mr. Chairman, yes, in terms of what
19 we need to put in the response to comments, how do we
20 address that group? Do we say it is left open for
21 interpretation, or...

22 CHAIRMAN RUSSELL: Gosh, we haven't evolved at
23 all since Roundup.

24 MS. SHROPSHIRE: Can I give you my understanding?

25 CHAIRMAN RUSSELL: Well, let's do this first,

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1 Robin, because there's two separate things happening here,
2 and I think Leo would agree with that, from what his
3 comments were.

4 We have a motion on the -- We have a motion all over
5 the place, but we have a motion on the table for those two
6 additional sections for existing or permitted plants, for
7 that qualification. Do I have a -- do you want -- Let's
8 act on that, and then let's deal with the newly proposed
9 plants.

10 MS. KAISER: I have a question.

11 CHAIRMAN RUSSELL: Go ahead.

12 MS. KAISER: Did we vote on placing the first
13 two?

14 MS. SHROPSHIRE: I thought we did.

15 CHAIRMAN RUSSELL: We did.

16 MS. KAISER: Okay.

17 CHAIRMAN RUSSELL: We need to place the second
18 two.

19 So, Bill, are you okay with that?

20 MR. ROSSBACH: Yes.

21 CHAIRMAN RUSSELL: All right. So let's have a
22 roll call vote on placing in the third and fourth
23 sections.

24 MR. LIVERS: Heidi.

25 MS. KAISER: For. Aye.

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1 MR. LIVERS: Kim.

2 MS. LACEY: Yes.

3 MR. LIVERS: Don.

4 MR. MARBLE: Yes.

5 MR. LIVERS: Bill.

6 MR. ROSSBACH: Yes.

7 MR. LIVERS: Robin.

8 (Static.)

9 MR. LIVERS: Robin.

10 MS. SHROPSHIRE: Sorry. (Static.)

11 MR. LIVERS: I'm afraid we still couldn't hear
12 you.

13 MS. SHROPSHIRE: Yes.

14 MR. LIVERS: Thank you.

15 Gayle.

16 MR. SKUNKCAP: Yes.

17 MR. LIVERS: Joe.

18 CHAIRMAN RUSSELL: Yes.

19 MR. LIVERS: Okay, unanimously passes.

20 CHAIRMAN RUSSELL: What about newly proposed
21 plants?

22 MR. ROSSBACH: You know, let me just say this,
23 that issue is a whole other issue that just seems to me to
24 be opening the door to hours of discussion in a whole
25 other meeting. I'm not prepared to -- I understand the

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1 Department's position. I think they can state the
2 Department's position and the Department's practice in
3 that, and that the amendments are intended to clarify what
4 it's intended to clarify; nothing more, nothing less. I
5 just think we're opening a further can of worms that's not
6 necessary.

7 CHAIRMAN RUSSELL: I think BACT is its own
8 rulemaking. I've said that before. I think Bill is
9 right, I think this is too big to handle right now, but I
10 also think it's too big of an issue to leave it without
11 some clarification.

12 MS. SHROPSHIRE: Hello?

13 CHAIRMAN RUSSELL: I think we're all there,
14 aren't we? Did everyone get my comment?

15 MS. SHROPSHIRE: -- for a second.

16 CHAIRMAN RUSSELL: Tom, are you still there?

17 MR. LIVERS: Yeah, we're here, Mr. Chairman.

18 CHAIRMAN RUSSELL: Did you get my comment?

19 MR. LIVERS: I would agree some clarification
20 would help us, and it doesn't necessarily have to be in
21 rule language, but I think we need direction from the
22 Board. You know, currently, the response to comments
23 casts a broader net on this direction than does the
24 language that's now in the rule, and the response to
25 comments also clarifies that the intent is not to require

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1 redefinition of the source or changing boiler technology
2 for proposed plants, as well. It could be seen as an
3 inconsistency in the record perhaps that the language --
4 the rule language says one thing and the response to
5 comments says something slightly different.

6 I guess maybe I'll -- I'll toss something out,
7 although if our legal counsel or program staff has
8 additional thoughts, I'd appreciate hearing those. But
9 perhaps if the Board could direct the Department that the
10 position taken in the response to comments on this issue
11 is the manner in which we are to proceed, which is the
12 same way that the Board interprets BACT and applies it,
13 perhaps that would be helpful.

14 CHAIRMAN RUSSELL: Okay, I'm not exactly sure,
15 maybe because I was forming my own thoughts, that I
16 followed that. But is this something that the
17 Department's comments could be pared back to just address
18 those that are in the pipeline, actually literally in the
19 pipeline, actually have a permit?

20 MR. LIVERS: Mr. Chairman, if that's the position
21 the Board chooses to take on this issue, then, yes, you
22 could pare that back in the response to comments and deal
23 only with those that are -- the technologies currently in
24 use or in the final air quality permit. Again, it's the
25 Department's position that the manner in which we apply

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1 BACT also extends to proposed facilities.

2 CHAIRMAN RUSSELL: Right. Well, I think you're
3 right, Tom. I think you're absolutely right, that you're
4 going to apply BACT to any new facility. And I'm not
5 going to say the rest of what I was going to say. But I
6 think you're right, I think the Department applies BACT on
7 new permits, that we should look at the Department's
8 responses to comments, pare them back to what we have
9 acted upon today, those in the pipeline, those that exist
10 or that are permitted, and leave it at that. If, at some
11 point in the very near future, this board would like to
12 entertain rules on how BACT is administered via, you know,
13 a top-down process or some other process, that may be
14 something the Board would like to do. But it's probably
15 not right to move forward with that at this time.

16 MR. LIVERS: Mr. Chairman, my initial response is
17 that that certainly makes the notice internally
18 consistent. I think it may be problematic from our
19 perspective in that -- I guess what we're saying, we're
20 removing any reference, then, in this notice to say that
21 the Board -- or rather, the Department may not redefine
22 technology for proposed facilities. We're removing any
23 reference to that, so it suggests that we have that
24 ability, and that could be a potential litigation risk and
25 it could be somewhat problematic for us in our

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1 application.

2 CHAIRMAN RUSSELL: What would you suggest that we
3 do?

4 MR. LIVERS: Well, the sense I'm getting is that
5 the Board has gone as far as it wants to in terms of the
6 explicit language in the rule, and I understand that. I
7 guess I'm -- I'm going to toss something out. I'm also
8 going to look to staff to see if there are any additional
9 suggestions. But it would seem to me that we should -- I
10 think I would rather have the internal inconsistency in
11 the rule and have the response to comments remain the way
12 they are, because I think they pretty clearly state how we
13 apply this analysis, and I think we'd want to keep that.
14 And I guess I would perhaps ask for maybe some explicit
15 direction from the Board that the intent with the rule
16 language is to remain silent on this issue, but that the
17 Department has the ability to continue to interpret and
18 apply BACT in the manner that it's historically done and
19 as we've outlined today.

20 Let me just look real quickly to see if there are any
21 other suggestions beyond that from staff.

22 CHAIRMAN RUSSELL: Well, as you're doing that, I
23 was just going to read your response to comment on
24 page 48: "The owner or operator shall include in the
25 application an analysis of potential mercury control

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1 options, including, but not limited to, boiler technology,
2 mercury emission control technology, and any other mercury
3 control practices."

4 MR. LIVERS: Mr. Chairman, you know, at the last
5 meeting, it looks like we opened a can of worms that's now
6 being misinterpreted, and that's been, really, the reason
7 for all the language today. As I recall the context of
8 the discussion that led to including this language in the
9 first place, it was to give facilities a full spectrum of
10 options in how it addressed mercury emissions, that it
11 wasn't limited strictly to add-on control technologies.

12 The whole purpose of adding this boiler language in
13 the first place was so that facilities had the entire
14 range of tools available that might include boiler
15 technology. Unfortunately, that's now been taken out of
16 context and misinterpreted to have some risk of BACT
17 analysis, and it's prompted, you know, these amendments.
18 And ultimately, we've kind of led ourselves to a little
19 bit of a difficult position with respect to how far we
20 want to go on explicitly stating the range to which these
21 will be applied.

22 So I guess as you look through the response to
23 comments and read that reference to boiler technologies or
24 boiler technology and practices, remember the context of
25 the discussion at the last meeting.

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1 MS. LACEY: This is Kim Lacey. What our language
2 was, was to give these people a little bit of flexibility
3 so we weren't tying their hands down, and that's why we
4 asked the Department to proceed in adding some of this
5 language, is to allow flexibility.

6 CHAIRMAN RUSSELL: But Kim, you were there with
7 me on Roundup.

8 MS. LACEY: No, I wasn't.

9 CHAIRMAN RUSSELL: Oh. I was there by myself on
10 Roundup. And quite frankly, this was the biggest issue:
11 Where do you start applying BACT? And it's still not
12 clarified. This is -- if we don't clarify it either today
13 or in a new rulemaking process very soon, this will be the
14 next contested case, the next big contested case that the
15 Board sees. Mark my words, it will be a big issue. We're
16 not doing anything to clarify it.

17 MS. SHROPSHIRE: Joe, this is Robin.

18 CHAIRMAN RUSSELL: Go ahead, Robin.

19 MS. SHROPSHIRE: I just worry -- I mean, I'm not
20 sure I feel prepared to clarify that today. I mean, I
21 don't know if that's -- Is that outside of this rule, or
22 do you think that that's within the scope of this
23 rulemaking?

24 CHAIRMAN RUSSELL: If you read the next few
25 sentences down, it says: The analysis of boiler

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1 technology is intended by the Board to allow inclusion of
2 specific boiler technology or boiler optimization
3 techniques that provide mercury control in the analysis or
4 the specific configuration in use or proposed. In use or
5 proposed.

6 MS. SHROPSHIRE: Well...

7 CHAIRMAN RUSSELL: The boiler technology is not
8 intended -- And this is where the Department is hanging
9 their hat, is to require redefinition of the emission
10 source or a change in boiler technology from the currently
11 installed or proposed boiler configuration. "Proposed"
12 should mean something.

13 MS. SHROPSHIRE: Right.

14 CHAIRMAN RUSSELL: It shouldn't mean a letter
15 floating around saying we're going to do this. It should
16 be an application. And anything prior to that should be
17 able to address the boiler technology.

18 MS. SHROPSHIRE: Can we take out -- Can I -- I
19 mean, this is Robin again. Would it be appropriate to
20 take out "proposed"?

21 CHAIRMAN RUSSELL: No, "proposed" is fine here.

22 MR. LIVERS: Mr. Chairman, this is Tom. Maybe we
23 could go through the response to comments and look at it
24 with an eye towards your concern, that "proposed" needs to
25 have some hook on which to hang, and I think the spirit is

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1 proposed in an air quality permit application.

2 Something -- and get that concept in so that it's more
3 than just an idea on the back of a napkin. Would that
4 help?

5 CHAIRMAN RUSSELL: Tom, that's the concept of in
6 the pipeline, to me. Not pipe dream. Okay? There's a
7 big difference between pipeline and pipe dream. And quite
8 frankly, I think that should be addressed.

9 MR. LIVERS: Well, let me just ask, if we were to
10 work with that direction in the response to comments,
11 would that address your specific concern about giving more
12 definition to "proposed"?

13 CHAIRMAN RUSSELL: Well, I think what it does is
14 it clarifies what we've done so far. It still hasn't
15 addressed those things that are proposed in 2012. How do
16 you apply -- how do you apply permitting and BACT to a
17 proposed facility in 2012? And I think Bill's point was,
18 that's up to the Department or the Department's discretion
19 on how they apply BACT.

20 And don't let me put too many words in your mouth,
21 Bill. But your point was, these things that exist
22 shouldn't have to change their boiler technology to comply
23 with AEL --

24 MR. ROSSBACH: Right.

25 CHAIRMAN RUSSELL: -- or BACT.

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1 MR. ROSSBACH: Right.

2 CHAIRMAN RUSSELL: But we still have what --
3 Those proposed in 2012 that have not been considered
4 through an active application, what are we going to do
5 with them?

6 MR. ROSSBACH: At least at the present time, the
7 Board continues to operate the way they always have until
8 we tell them something different.

9 CHAIRMAN RUSSELL: Right. So what we've done is
10 we've clarified those that exist, and we need to, probably
11 based in another rule, address how BACT is going to be
12 applied. And we can do that, because that can happen or
13 not happen. But in another rule, we need to apply -- see
14 how BACT and permitting is going to apply to newly
15 proposed EGUs.

16 And then you need to change your language, Tom, to
17 make it consistent.

18 MR. LIVERS: Well, Mr. Chairman, I wonder if the
19 Department could at this time ask the Board for direction.
20 What I am hearing is that the Board is -- the Board has
21 put the language it wants in the rule, but it is allowing
22 the Department discretion in how it applies BACT to
23 proposed facilities. So if maybe we could get some
24 explicit direction from the Board that the Department may
25 make that determination and continue to proceed as it has

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1 historically with respect to this analysis for new -- for
2 proposed facilities and that we ensure that the language
3 in the response to comments is consistent with that.

4 CHAIRMAN RUSSELL: That's fine with me.

5 MR. ROSSBACH: That seems to be consistent with
6 what I'm hearing generally from the Board at this point,
7 until we decide to take this whole area up later.

8 MS. SHROPSHIRE: Yes. This is Robin. I agree.

9 CHAIRMAN RUSSELL: You know, we're not voting on
10 it, but I've heard from Bill and Robin. Don, how are you
11 with that?

12 MR. MARBLE: I agree. I think we need to take it
13 up later. And my -- the rule says that when they come in
14 and apply for the permit, then the Department goes through
15 this process, they look at various boiler technologies and
16 all that, but once they get their permit, and then if it
17 doesn't work and they come in for an AEL, we're not going
18 to tell them they've got to change boilers at that point.
19 I hope -- That's what I'm understanding, but I'm not sure
20 I clearly understand it.

21 CHAIRMAN RUSSELL: Don, I think you hit it.

22 Heidi.

23 MS. KAISER: I'm with Don.

24 CHAIRMAN RUSSELL: Gayle.

25 (Static.)

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1 CHAIRMAN RUSSELL: Go back to Gayle.

2 Kim.

3 MS. LACEY: Yes.

4 CHAIRMAN RUSSELL: Gayle.

5 MR. SKUNKCAP: I agree.

6 CHAIRMAN RUSSELL: All right, so we're all on
7 board. Let's move forward then, because we're running out
8 of time.

9 MR. LIVERS: Okay, thank you, Mr. Chairman. I
10 appreciate that direction from the Board, and that's how
11 we'll proceed, and we will ensure that the language and
12 the response to comments is consistent with that
13 direction.

14 CHAIRMAN RUSSELL: All right. Thank you, Tom.

15 Anyone else that -- we actually got those four -- we
16 did those four places, we're done with that issue. Anyone
17 else want to suggest a modification to the rule that we
18 have been mailed?

19 MR. ROSSBACH: This is Bill again. Could I --
20 Not knowing whether anybody else has got their hands in
21 the air, I don't want to be preempted, but I've got
22 another question for Tom and Chuck. Is that appropriate?

23 CHAIRMAN RUSSELL: Yeah, fine.

24 MR. ROSSBACH: Okay. Last night, and actually
25 after the last board meeting, I had some sort of

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1 philosophical problem with a hard number like we did for
2 2018, for AELs for 2018. My issue there is that I am
3 concerned that when we start putting 1.2 or any other
4 number in, that we are creating a target rather than a
5 ceiling. And so I discussed this several weeks ago with
6 Tom and then again yesterday.

7 I guess what I would like to see -- And I apologize to
8 Chuck. Chuck sent me some materials today. I guess my
9 concern is that I want to be sure that if there is a need
10 in 2018 to get an alternative emission limit, for whatever
11 reason, that the same process and standards apply to that
12 AEL as to the original AEL in 2010, 2011. That is, that
13 there is a set of standards of what is required and that
14 there be a schedule and a progress type of reporting and
15 sanctions provided as -- Honestly, Chuck, I'm sorry. Your
16 proposal in the drafting you sent me, how would we go
17 about doing that? Do you feel that that is covered in the
18 rule that was sent out that we have now before us, or is
19 there additional language that you suggested to me in this
20 e-mail you sent me yesterday that would do that? I
21 apologize, I'm just trying to look at these different
22 rules and see where these things are.

23 That's my concern. I want to have -- whether we put
24 hard numbers in for 2018 or not, I don't want to just make
25 2018 an indefinite. They get an AEL in 2018 and then what

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1 happens? Do they get that AEL for 10 years until the next
2 BACT comes in, what happens? And can we draft the
3 language of this rule, or does this rule as it's currently
4 stated require a process then like we have for 2014?

5 MR. HOMER: Mr. Chairman, Mr. Rossbach, if you'll
6 look on page 3 of the notice, in section (3), it describes
7 in some detail the information that has to be submitted as
8 part of the application for an AEL.

9 MR. ROSSBACH: Right.

10 MR. HOMER: On page 4, in the newly renumbered
11 section (5), it describes the process that the Department
12 must go through in establishing the AEL. If we move on to
13 section (7), where we're talking about the application
14 that has to be submitted for the 2018 standard in 2014,
15 right near the bottom of page 4, it reiterates that the
16 information that must be submitted is the same that is
17 required in (3)(b)(i) through (iv).

18 In the section newly renumbered (8), about the middle
19 of page 5, it refers to -- that the revised alternative
20 mercury emission limit, again, that's effective in 2018
21 must meet the requirements of (4), referring back to --
22 and again, that will have to be renumbered to (5) now. So
23 that's where it requires the same information submittal
24 requirements and the same diligence from the Department in
25 establishing the revised AEL.

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1 If we go to section (9), about five lines up from the
2 bottom of page 5, it there refers to, for the 10-year
3 renewal, that the information required is the same as in
4 (3)(b)(i) through (iv). At the top of page 6, it again
5 restates that the requirement there, that ultimate limits
6 must meet the requirements of (4).

7 So that was what we believed was sufficient to require
8 those next two limits, the 10-year renewal and the 2018
9 limit, to use the same information submittal requirements
10 and the same processes for establishing the AEL.

11 MR. ROSSBACH: And so the requirement for
12 reasonable effort to be incorporated into both of those as
13 well because that's in section (4)?

14 MR. HOMER: Excuse me. Yes, that's correct.

15 MR. ROSSBACH: Is that correct? I'm sorry.

16 MR. HOMER: Mr. Chairman, Mr. Rossbach, yes,
17 that's correct.

18 MR. ROSSBACH: So the reasonable progress
19 requirements of (4), the ability for the Department to
20 consider lack of reasonable progress a violation of the
21 permit, would still be applicable to any AEL that is
22 imposed in 2018; is that correct?

23 MR. HOMER: Mr. Chairman, Mr. Rossbach, yes, that
24 is correct.

25 MR. ROSSBACH: Okay. That answers my question.

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1 CHAIRMAN RUSSELL: So, Bill, you don't want to
2 take those AEL ceilings out now?

3 MR. ROSSBACH: I'm just very uncomfortable with
4 the AELs as they look like a target rather than the
5 ceiling. But with the imposition of section (4) or newly
6 renumbered (5), reasonable progress requirements, I
7 guess -- I guess I can live with it. I just am -- I don't
8 like the way the numbers work out.

9 And this is not intended to target Great Northern, but
10 I don't -- I'm uncomfortable with the way we apply the
11 multiplier to lignite to come up with that 2.84. I'm
12 really troubled by giving 2.84 a ceiling on lignite for
13 2018. I just am much more optimistic that we're going to
14 get there. And we have the alternative limit or
15 requirement in, we're going to have -- we're going to give
16 them the soft landing that they need, but yet, still not
17 give them -- That's just my philosophical problem with it.
18 But if everybody else is comfortable with leaving that in
19 as a ceiling, I'm not going to...

20 CHAIRMAN RUSSELL: Bill -- Robin.

21 MS. SHROPSHIRE: I'm not -- I mean, I'd like to
22 comment on that, too, but I don't know.

23 CHAIRMAN RUSSELL: Let me make a suggestion which
24 could cause this cascading effect. By 2018, you would
25 expect that lignite could be burned to a fairly high level

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1 of mercury control. Well, we would expect that. What if
2 you were to take out -- Let's leave 1.2, because it's -- I
3 mean, you just can't, it's the ceiling, you can't exceed
4 it. But what if you were to take in (a), 2.8 pounds of
5 mercury per trillion Btu, calculated on a 12-month average
6 for a mercury-emitting generating unit that combusts
7 lignite and in operation prior to January 1, 2018. And on
8 the other one, you take out "other" in (b), and it just
9 says "for all mercury-emitting generating units." So if
10 it's existing, give it that, but if it wants to come in
11 after that, why should we be continuing to give credit
12 after 2018?

13 Follow that?

14 MR. ROSSBACH: Yeah.

15 CHAIRMAN RUSSELL: I mean, that's pretty easy to
16 change and say lignite after 2018 has the same ceiling as
17 subbituminous.

18 MS. SHROPSHIRE: The .9 and the 1.2?

19 CHAIRMAN RUSSELL: Well, .9 is the permit limit
20 and 1.2 is the soft -- to the soft landing.

21 MS. SHROPSHIRE: And I guess my -- Along the same
22 lines, my concern is that then the target becomes the soft
23 landing rather than the limit.

24 CHAIRMAN RUSSELL: Is that a bad thing? And it
25 is, and I think Bill was just described, by Chuck, a

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1 process that says, you know, it's .9 and we're going to
2 expect you to do as well as you can.

3 MR. LIVERS: Mr. Chairman, this is Tom. I'd
4 weigh in reiterating that point you just made. And I
5 think we tried to convey this at the last meeting, and I
6 think the subsequent language that we added after the last
7 meeting in terms of giving a lot more definition to that
8 AEL analysis, what's required, and what criteria the
9 Department would use, I think those are strong
10 improvements to this rule. And as I think Chuck just
11 pointed out a few minutes ago, they will apply both
12 initially and then subsequently.

13 We've tried to make it clear that in no way are the
14 ceilings targets, they are just that, they're ceilings.
15 We proposed them to give some sense of an upper bracket on
16 these AELs so that there was some understanding that an
17 alternate emission limit was not limitless, that it had to
18 be set within certain brackets and that there's a fairly
19 rigorous test to get an AEL. Just because someone applies
20 for an AEL does not mean they're going to get the upper
21 limit. And I think that's understood. I respect and I
22 understand the concerns of the board members who feel that
23 those ceilings might, de facto, become targets, but it's
24 our position in the Department that they're not targets,
25 they're ceilings; there is a rigorous analysis that goes

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1 into that, and they are only intended to put an upper
2 limit on.

3 CHAIRMAN RUSSELL: Thanks, Tom.

4 Any other comment by the Board?

5 MR. MARBLE: Well, I have a question. This is
6 Don.

7 CHAIRMAN RUSSELL: Don.

8 MR. MARBLE: It seems to me like, for example,
9 the improvements we've seen in mercury control over the
10 last year even have been pretty profound for the
11 non-lignite burning coal plants, and it's hard for me to
12 believe that -- Can you hear me okay?

13 MR. LIVERS: Yes.

14 MR. MARBLE: It's hard for me to believe there
15 aren't going to be like improvements over the years up to
16 2018. I mean, who knows what will be taking much more
17 mercury out? I think that will happen. But this rule
18 we're making, like what's going to happen in 2018, for
19 example, these rules can be amended, can't they? I mean,
20 as the technology improves, we should be able to change
21 the rule, it seems to me, to reflect these improvements.
22 Is that possible, or can't we do that?

23 MR. LIVERS: Mr. Chairman, Mr. Marble, this is
24 Tom. I think you've nailed it. You know, one of the
25 things we're trying to accomplish at this point in time is

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1 a rule that's aggressive but achievable. We recognize the
2 challenges that are faced with uncertainty. We believe
3 the technology is going to continue to ratchet down, and
4 that's why we've built in processes to accomplish that
5 over time. But certainly, this board, subsequent boards
6 can come back in the future, and if technology has moved
7 faster, further than we thought or, for whatever reason,
8 not at the pace we thought, the limits and the AEL
9 ceilings can always be amended.

10 MR. MARBLE: I have another comment. This is
11 about (3) on page 3, the process where you go through for
12 your AEL and then you get into this control strategy and
13 process. I'm not very satisfied with the way that -- down
14 towards the bottom of page 3. I just feel like it needs
15 to be more concrete, more deadlines set as to when they
16 come in, they say, well, we're going to try this now for a
17 while and see if that works. If that works, fine; if it
18 doesn't, then they come back. I'd like to see more detail
19 in there. But at the same time, I think it's -- We're
20 talking about what's going to happen in 2011, so I think
21 we've got plenty of time to fine-tune that, and I'm going
22 to vote for it the way it is. But I want to make clear
23 that I think it needs to be improved. But we'll have
24 time, I guess. 2011 is quite a ways off.

25 CHAIRMAN RUSSELL: Any further comments?

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1 MS. SHROPSHIRE: Well, I guess just to continue
2 on with that -- This is Robin. All along, I feel like the
3 Board has agreed that we want to see a rule that allows
4 for economic development and protects public health. And
5 from, you know, hearing industry's comments and reading
6 the comments, I think, you know, one of the biggest
7 issues, at least in terms of economic development, is the
8 ability to get financing. And their main concerns, again,
9 I think was the 298 cap and also the ability to get a soft
10 landing.

11 And I guess something that sort of adds confusion to
12 this, maybe not so much for me because I feel pretty
13 strongly about this lignite issue, but is that in light of
14 the Roundup announcement, you know, about the intention to
15 build an IGCC plant, that shows me -- I mean, it gives me
16 confidence for a couple things. One, we've dropped --
17 basically, that frees up around 60 pounds of mercury in
18 terms of the cap, and the proposed plants that are on the
19 table, there isn't that risk that existed before.

20 The other thing is that to me, it shows that companies
21 can get financing to build plants that emit very, very low
22 levels of mercury. And I think that's -- I guess just in
23 light of a -- Well, I mean, with regards to that in public
24 health, the whole concept, in my mind, of cap-and-trade is
25 that it was designed to decrease globally transported air

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1 pollution, but it wasn't designed for hazardous pollutants
2 like mercury. And all along, you know, the argument has
3 been that we can treat mercury as a globally transported
4 pollutant, therefore, cap-and-trade is okay. And I guess
5 I -- you know, just like mercury technology is improving,
6 it seems like on a daily basis, we're getting more and
7 more evidence that mercury is locally deposited. And we
8 heard both industry and non-industry folks say that if, in
9 fact, mercury is locally deposited, that cap-and-trade
10 isn't really a great idea. So, I mean, I think that
11 really disturbs me, is that we're saying that we think
12 mercury is locally deposited, but we're including
13 cap-and-trade in this rule.

14 I think -- And, you know, I've gone back and forth and
15 back and forth on this, but I think the cap-and-trade
16 portion of this rule isn't going to go away. I think
17 there's problem with it, not only because mercury is a
18 hazardous pollutant, but it is locally deposited. But the
19 other real problem is that we can't measure it very well.
20 And so that is a big concern for me. But I think if we
21 could -- the biggest problem I have right now are the
22 lignite numbers; is that we're giving lignite such -- I
23 mean, we're almost saying that they can emit twice as much
24 if they burn lignite, and we're also saying that in terms
25 of the cap-and-trade portion of this, that if you're going

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1 to burn lignite and we're above the cap, you don't have to
2 buy it until 1.5. And so I'm still -- I'm very concerned
3 about that. And I think if you have strict limits on
4 mercury emissions, that the cap-and-trade part is, you
5 know, not as troublesome. But -- and I guess also, my
6 belief is that CAMR is going to go away anyway.

7 So I guess for me to really support this rule, I would
8 like to see the lignite numbers the same as every other
9 EGU. And if you look at just Lewis and Clark, for
10 example, and the mercury content in that coal is a little
11 over 6 pounds per Btu.

12 RECORDING: Your conference call will end in
13 10 minutes. To extend conference duration by 15 minutes,
14 press star-98.

15 CHAIRMAN RUSSELL: Robin.

16 MS. SHROPSHIRE: Well, I guess --

17 RECORDING: Your meeting duration has been
18 extended.

19 MS. SHROPSHIRE: -- industry and, you know,
20 STAPPA/ALAPCO and also other places in the record, I
21 truly, truly believe that lignite can achieve the same
22 numbers as non-lignite. And I would propose -- I'd like
23 to make a motion that lignite numbers and the
24 cap-and-trade portion of this rule be identical for all
25 types of coal in Montana.

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1 CHAIRMAN RUSSELL: Even for the Lewis and Clark
2 plant?

3 MS. SHROPSHIRE: No, I'm sorry. For proposed
4 facilities, thank you. For new facilities, non-existing
5 facilities.

6 CHAIRMAN RUSSELL: Do I have a second? If
7 nothing else, for discussion.

8 MR. MARBLE: I'm not sure I understand the
9 motion. Could you repeat it again, Robin?

10 MS. SHROPSHIRE: Yes. My motion is that for new
11 facilities, that the lignite -- that all facilities be
12 treated equally in Montana and that the limits be .9 and
13 1.2 for new facilities.

14 CHAIRMAN RUSSELL: Is there a second?

15 MR. MARBLE: So what part of the rule would that
16 change?

17 CHAIRMAN RUSSELL: Well, it starts in
18 section (8), new section (8), where I just mentioned that
19 you would have to put it in operation prior to
20 October 1st, 2006. You take (b), you take "other" out, so
21 it would be all mercury emission limits. You go back to
22 page 4, and you would -- in essence, you'd take out, leave
23 (a) in, you'd take out (b) on section (6), and you'd -- in
24 part (d), you'd modify -- And you have to realize, Robin
25 and I haven't talked about this, but I've been thinking

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1 about the same thing. In part (d), you'd modify it and
2 take out the last statement "that do not combust lignite."
3 It's all mercury-emitting generating units.

4 MS. SHROPSHIRE: And I mean, I guess my fear is
5 that we're giving an incentive to a form of coal that is a
6 lower Btu value, we're allowing them to emit higher levels
7 of mercury, and my fear is that we're not going to
8 incentivize new IGCC plants. I mean, I think if we treat
9 everything equal, we're going see better technology
10 proposed.

11 CHAIRMAN RUSSELL: Okay. Is there a second?

12 MR. SKUNKCAP: I'll second it, Mr. Chairman.

13 CHAIRMAN RUSSELL: All right, it's been seconded
14 by Gayle. Any further discussion?

15 MS. LACEY: This is Kim Lacey. How would this
16 affect the Rocky Mountain power station and the agreement?

17 CHAIRMAN RUSSELL: It has a permit, right?

18 MR. LIVERS: That's not a lignite plant,
19 Mr. Chairman, so that wouldn't be affected by this
20 specific action. That specific facility would not be.

21 MS. SHROPSHIRE: I'll just add one last thing.
22 My other fear is that the proposed lignite numbers, I
23 feel, are arbitrary to some extent. I'm having trouble
24 coming up with the same numbers based on evidence in the
25 record.

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1 CHAIRMAN RUSSELL: All right. It's been moved
2 and seconded. Any further discussion?

3 MR. LIVERS: Mr. Chairman, this is Tom. With
4 respect to the numbers, you know, we've relied on some of
5 the analysis from EPA with a multiplier for lignite that
6 recognizes that it is -- it contains more mercury than
7 subbituminous and also has more difficulty in cleaning
8 than subbituminous, and they've applied a multiplier that
9 we have implemented in various places in the rule.

10 CHAIRMAN RUSSELL: And I understand that. But we
11 also have a newly proposed IGCC concept out there that
12 would probably do quite well by mercury.

13 MR. MARBLE: Well, the Great Northern, that's not
14 permitted, is it?

15 CHAIRMAN RUSSELL: No.

16 All right, we need to take public comment on this,
17 and, then, Board, if you want your last shots at it before
18 we take action, this is probably the last thing we'll be
19 able to handle.

20 So anyone out there that wants to speak to this?

21 MR. LIVERS: Anyone that wants to speak
22 specifically to the motion with respect to lignite?

23 We have someone coming, Mr. Chairman.

24 CHAIRMAN RUSSELL: All right.

25 MR. BERRY: Surprise, surprise. Leo Berry, from

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1 Great Northern Power. Mr. Chairman, just a couple of
2 comments.

3 One is, we all know that in order to put lignite on
4 parity with subbituminous, there has to be a distinction.
5 There are some other factors I think you need to consider
6 here, and that is, 65, 70 percent of Montana's coal is
7 lignite. And it can't be transported; it has to be
8 utilized here, for reasons that are of a technical nature.

9 And the other thing is that I think you need think
10 about it before you start to disadvantage lignite and
11 basically advantage subbituminous coal, which is what this
12 would do, because it's easier to remove the mercury from
13 subbituminous than it is for mercury (sic). So what you
14 do is you push people toward burning subbituminous, which
15 you think might be a good idea. But if you're really
16 concerned about local depositions of mercury, what you've
17 done is start to push power development in a very limited
18 geographical area in Montana, I think which exacerbates
19 another concern that you might have. Now, people might
20 disagree on the issue of local depositions, but if you're
21 convinced that that is the issue, you might want to think
22 about that before you do that.

23 In addition, you know, treating lignite in an equal
24 manner with subbituminous may very well place the
25 Nelson Creek project in a position that it can't be built.

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1 Now, people are talking about we think technology is going
2 to be able to do that. And everybody thinks technology
3 will do that. But getting people to give you guarantees
4 or the money to do it based on that assumption is a little
5 different than talking about it in the abstract.

6 You must also remember that when Great Northern comes
7 in for their permit application, they're going to go
8 through a BACT review in their initial application. Then
9 in 2009, they've got to make another submittal to the
10 Department if they get their permit before that, and
11 they've got to go through analysis we've just been talking
12 about. And when they get to 2018, they've got to go
13 through another BACT analysis. So whatever the technology
14 dictates at that point that is economically feasible to
15 install, that's what is going to have to be done.

16 So there is going to be a progress of reducing,
17 because I don't think -- The concern that a plant like the
18 Nelson Creek plant will sit back and doing nothing and
19 just use that as a target is not the way the rule, in
20 application, is going to apply. So you're going to have
21 those periodic reviews, and every 10 years after that,
22 you're going to go through another review. And so as
23 technology does improve, hopefully it will meet those
24 kinds of goals.

25 But to base a rule on the assumption that it's going

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1 to happen, I think, is very detrimental potentially to the
2 Nelson Creek project.

3 CHAIRMAN RUSSELL: All right, thanks.

4 We are going to run out of time in a few minutes.
5 Tom, is there any way we can get a little extra time?

6 MR. LIVERS: Mr. Chairman, I have extended it by
7 15 minutes, so we'll have until 2:15. We may be given
8 that option again, I'm not sure. And so we have about
9 15 minutes left currently. It may be possible to extend,
10 I'm not sure, so we'll have that. We'll also want to make
11 sure that we allow for general public comment on -- not
12 specific to any of these motions, but on any provisions
13 that are relatively new to the rule that were not included
14 in the initial public comment period.

15 CHAIRMAN RUSSELL: Thanks, Tom.

16 MS. SHROPSHIRE: This is Robin. I just want to
17 comment quickly that I think that there are good soft
18 landings in place for lignite, and I wouldn't have made
19 this motion if I thought it was going to hurt
20 Great Northern, and I still think it's a reasonable
21 motion.

22 MR. LIVERS: May I ask for a clarification on the
23 motion? I think in the discussion, there was talk of
24 making the limit the same as subbituminous, so .9, and
25 that was not included in the motion. I don't know if that

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1 was intended or not.

2 CHAIRMAN RUSSELL: It was.

3 MS. LACEY: It was; is that what you said, Joe?

4 CHAIRMAN RUSSELL: Yes. It would have to be.

5 MR. LIVERS: And with respect to the issue of the
6 allocation, is that of interest, as well?

7 CHAIRMAN RUSSELL: Well, I think if the limits
8 are -- if the permit limits are set, then it's going to
9 have to --

10 MS. SHROPSHIRE: My thought was that the
11 allocations would be -- that everything would be treated
12 equally.

13 MR. LIVERS: Okay. Mr. Chairman, Ms. Shropshire,
14 I believe that we could act with that direction, then, and
15 make any PURPA changes were the motion to pass.

16 MR. ROSSBACH: I have a comment.

17 CHAIRMAN RUSSELL: Bill.

18 MR. ROSSBACH: You know, this is with all due
19 respect to Robin, and I appreciate it. My concern about
20 lignite is that I do not feel that we have a record before
21 us of available technology that has been in any kind of
22 long-term basis to say that lignite can reach the same
23 levels as the subbituminous. I believe that we will have
24 the opportunity, if, in fact, the technology does improve
25 as we hope it will, to change the limits over time. I am

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1 uncomfortable -- that's why I stated I had a great deal of
2 discomfort about the limits that we were setting for the
3 AELs, just because that multiplier puts that 2.8 number on
4 lignite. But with the understanding that we're talking
5 about process, and particularly about a BACT process at
6 different stages, I'm going to vote against this, because
7 I don't think we have a record to support it yet. I
8 just -- I've looked at all of the studies that we have of
9 record, and I don't think we have a scientific basis for
10 today saying that we can impose the same limits on
11 lignite.

12 CHAIRMAN RUSSELL: Even though there are studies
13 in North Dakota that say that they can get 95 percent
14 control?

15 MR. ROSSBACH: On a two-day run.

16 MS. KAISER: Studies. I'm not sure they're
17 proven.

18 MR. ROSSBACH: I'm not sure, Joe. That's my
19 problem. I look at those things, and none of them --
20 They're all tests. They're just, they're all tests, and I
21 understand -- and not with, you know, starting from
22 scratch trying to burn it for a year.

23 MS. SHROPSHIRE: This is Robin. I appreciate
24 that, Bill. And I guess my feeling is that there's lots
25 of data in the record that show that it's achievable. And

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1 I guess my other thought is that I -- in weighing public
2 health versus delaying a project -- I mean, I truly think
3 that it's achievable, but I'm going to have to go with the
4 public health.

5 MR. MARBLE: Well, let's vote.

6 CHAIRMAN RUSSELL: Any further comments?

7 (No response.)

8 CHAIRMAN RUSSELL: All right, roll call vote.

9 MR. LIVERS: And I believe the motion is clear.
10 Heidi.

11 MS. KAISER: I'm opposed.

12 MR. LIVERS: Kim.

13 MS. LACEY: No.

14 MR. LIVERS: Don.

15 MR. MARBLE: No.

16 MR. LIVERS: Bill.

17 MR. ROSSBACH: No.

18 MR. LIVERS: Robin.

19 (Static.)

20 MR. LIVERS: I'm sorry. Robin.

21 MS. SHROPSHIRE: Yes.

22 MR. LIVERS: Gayle.

23 MR. SKUNKCAP: Yes.

24 MR. LIVERS: Joe.

25 CHAIRMAN RUSSELL: Aye.

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1 Motion fails.

2 MR. LIVERS: Motion fails 4-3.

3 CHAIRMAN RUSSELL: Let's keep moving, then.

4 MR. LIVERS: Are there any other motions by the
5 Board?

6 (No response.)

7 CHAIRMAN RUSSELL: I'm guessing from the chatter
8 that's probably all the substantive stuff. Tom, let's get
9 to some public comments.

10 MR. LIVERS: Okay, Mr. Chairman.

11 Let's open it up to public comment. Again, it will
12 have to be limited in time and limited in scope to those
13 items that have essentially surfaced since the public
14 comment period. And I guess, just for logistics, I would
15 start here in Helena to see if anyone has comment.

16 We have someone coming, Mr. Chairman.

17 MR. LAMBRECHT: Thank you, Mr. Chairman. My name
18 is Mark Lambrecht. I'm the regulatory affairs manager for
19 PPL Montana. I'm also speaking today on behalf of the
20 other Colstrip owners.

21 First of all, Board Member Shropshire, we've had some
22 discussions, and I just wanted to get back to your --

23 RECORDING: Your conference call will end in
24 10 minutes. To extend conference duration by 15 minutes,
25 press star-98.

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1 Your meeting duration has been extended.

2 MR. MARBLE: I'm here.

3 MS. LACEY: I'm here.

4 MR. LIVERS: I'll do a real quick roll call, but
5 I've just extended it. I believe we've got until 2:30 if
6 we need it. A real quick roll call for making sure we've
7 got everybody. Heidi.

8 MS. KAISER: Yes.

9 MR. LIVERS: Kim.

10 MS. LACEY: Yes.

11 MR. LIVERS: Don.

12 MR. MARBLE: Yes.

13 MR. LIVERS: Bill.

14 MR. ROSSBACH: Yes.

15 MR. LIVERS: Robin.

16 MS. SHROPSHIRE: Yes.

17 MR. LIVERS: Gayle.

18 MR. SKUNKCAP: Yes.

19 MR. LIVERS: Joe.

20 CHAIRMAN RUSSELL: Maybe.

21 MR. LIVERS: Great, thank you.

22 MR. LAMBRECHT: Again, I'm Mark Lambrecht, with
23 PPL Montana.

24 Board Member Shropshire, I just wanted to get back to
25 your comment about the Steubenville study and local

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1 deposition. We've had numerous discussions about this and
2 comment over the last year about this, but I did want to
3 mention again, as we've mentioned to you before, the
4 Steubenville study did actually back up the results of the
5 EPRI and EPA studies, as well as the one conducted by
6 Environ, that demonstrated modeling of mercury deposition
7 does provide some local deposition in Ohio and some of
8 those northeastern states, but it does not have the same
9 results for Montana. And we did go over those reasons for
10 that. There's differences in the types of mercury
11 emitted, there's differences in topography, precipitation
12 patterns, and things of that nature. So I just wanted to
13 make that point.

14 Again, I would rather see us compare apples to apples.
15 We have made the offer to start the protocol for a study
16 that would be similar to a Steubenville study so that we
17 could compare monitoring to monitoring rather than
18 modeling to monitoring. We'd like to see that done in
19 Montana so we really know what we have; and then if there
20 is local deposition, then we could properly deal with it
21 at that time. But as I said, the modeling doesn't show
22 that we do have the local deposition in Montana. So the
23 rule should proceed with that understanding. That being
24 said, we still are committed to addressing this important
25 issue at both the Colstrip plant and the Corette plant in

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1 Billings.

2 The first issue that I wanted to take up regarding
3 changes that have happened since the earlier version of
4 the rule is in relation to the allowances. The current
5 version of the rule changed the allowance formula. The
6 previous version allowed existing sources to sell
7 allowances to help defray some substantial costs of
8 control strategy. This version requires the plants to
9 purchase a greater percentage of the allowances and invest
10 that and also make a similar investment in their control
11 strategy. And I believe this provision is a requirement
12 that does nothing to advance protection of public health,
13 but only serves as a punitive measure.

14 The second point is in regards to BACT review. We've
15 looked at this, and requiring BACT review every 10 years
16 into perpetuity, at some point, you reach a point of
17 diminishing returns. We believe that if you meet the
18 0.9 pounds per trillion Btu standard, that should end any
19 review of -- any further review of technology. To require
20 additional negligible gains after compliance with the rule
21 is beyond the scope of what we're dealing with here.

22 I also wanted to talk about the economic impact
23 statement, which we hadn't commented on before. It's
24 clear that the EIS was based on an earlier version of the
25 rule than what we're dealing with today. And the earlier

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1 rule, as I mentioned before, provided a greater percentage
2 of allowances, and it even specifically mentions it in the
3 EIS, that sources would be able sell allowances to
4 generate revenue to offset the costs of control. Now,
5 this is no longer the case with this version of the rule.

6 Also, the EIS claims that mercury emissions from
7 Montana EGUs have an adverse environmental impact on
8 Montana. That's a pretty strong statement that I take
9 issue with. It ignores the mercury modeling results that
10 have been conducted by Environ on our behalf and also the
11 EPA and EPRI. It also bases its argument on the fish
12 samples that we've talked about in some of these matters
13 before. Fish, Wildlife & Parks' own study admitted that
14 only two water bodies in Montana do not -- have do-not-eat
15 orders, and that's Silver Creek due to mining history and
16 Big Spring Creek due to issues with PCBs, neither of which
17 involved mercury from Montana power plants. Incidentally,
18 as I've mentioned before, Castle Rock Lake, which is in
19 Colstrip, the results demonstrated to be half of what was
20 expected by the people doing the study for Fish, Wildlife
21 & Parks.

22 I think it also -- the EIS ignored or misinterpreted
23 some of the benefits of full participation in the
24 cap-and-trade program. The EIS analysis admitted that
25 denying full cap-and-trade participation would lead to

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1 substantial net cost increases for electrical generating
2 units. I would like to know why this BACT was ignored in
3 rulemaking. And it also had unsubstantiated comments
4 about the effect of this rule on ratepayer costs.

5 Those conclude my comments. Thank you very much.

6 CHAIRMAN RUSSELL: Thanks, Mark.

7 Anyone else want to comment?

8 MR. LIVERS: Anybody else in Helena here?

9 We have somebody coming to the podium.

10 MR. KELSEY: Yes. For the record, my name is
11 Dave Kelsey. I'm here with Southern Montana Electric G&T.

12 As most of you on the board know, we made some calls
13 and comments ahead of time here with regard to some things
14 that we have reservations about, and I want to thank the
15 members of the Board that got back to us and were open to
16 visiting about this. This issue is big for us and it
17 really has some economic impact to it, and we appreciate
18 you taking our comments about that. We think, you know,
19 hopefully with these insertions today, that we can
20 minimize those effects.

21 Thank you.

22 CHAIRMAN RUSSELL: Thanks, Dave.

23 Any further comments?

24 MR. LIVERS: Anyone else here in Helena who would
25 like to make a comment on the rule in general at this

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1 point?

2 (No response.)

3 MR. LIVERS: There appears to be nobody else in
4 Helena, Mr. Chairman. I know we have a few other people
5 participating around the state, maybe around the country.

6 CHAIRMAN RUSSELL: Anyone want to comment?

7 (No response.)

8 MR. LIVERS: Okay.

9 CHAIRMAN RUSSELL: All right. Well, I guess
10 we've waited long enough. We've amended the rule, and I'm
11 trying to recall who made the initial motion. Heidi did
12 the second and --

13 MR. LIVERS: We're checking on that right now,
14 Mr. Chairman. I want to say Heidi made the motion and Kim
15 seconded it.

16 CHAIRMAN RUSSELL: I know Heidi was in there.

17 MS. KAISER: I did the original. Yeah.

18 CHAIRMAN RUSSELL: With that -- And was Kim the
19 second?

20 MS. LACEY: Yes.

21 MR. LIVERS: Yes.

22 CHAIRMAN RUSSELL: So, Heidi, do you accept
23 the -- would you amend your motion to include the
24 amendments that were voted upon?

25 MR. LIVERS: Mr. Chairman.

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1 CHAIRMAN RUSSELL: Yes.

2 MR. LIVERS: And one thing we'll need to deal
3 with before we proceed with the vote, we will --
4 Because -- And actually, I think you are correct in moving
5 forward with whether the amendments are accepted. If they
6 are, we would ask that the language reflect that it's
7 contingent on the Department having the opportunity, then,
8 to make the changes as a result of this and then
9 presenting the final complete notice package on Monday.

10 CHAIRMAN RUSSELL: Correct. But we will not
11 re-vote on it unless --

12 MR. LIVERS: Correct.

13 CHAIRMAN RUSSELL: -- unless there is something
14 that doesn't appear to be amended properly.

15 MS. KAISER: So we actually have a call on
16 Monday?

17 CHAIRMAN RUSSELL: Yes, which we should try to
18 nail down before we get off the line.

19 So, Heidi, are you okay with the amendment?

20 MS. KAISER: Yes, the one amendment that -- I
21 guess there were two amendments to change language in four
22 different places.

23 CHAIRMAN RUSSELL: Correct.

24 MS. KAISER: Yes, I'm fine with that amendment.

25 MR. LIVERS: And the Department's minor

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1 housekeeping amendment, as well.

2 MS. KAISER: That's right.

3 MR. LIVERS: Kim, you're okay, as second?

4 MS. LACEY: Yes, I am.

5 CHAIRMAN RUSSELL: Any further discussion?

6 (No response.)

7 CHAIRMAN RUSSELL: Hearing none, all those in
8 favor signify through roll call.

9 MR. LIVERS: Okay, I'll read off the roll call.
10 Heidi.

11 MS. KAISER: Yes.

12 MR. LIVERS: Kim.

13 MS. LACEY: Yes.

14 MR. LIVERS: Don.

15 MR. MARBLE: Yes.

16 MR. LIVERS: Bill.

17 MR. ROSSBACH: Yes.

18 MR. LIVERS: Robin.

19 MS. SHROPSHIRE: Opposed.

20 MR. LIVERS: Gayle.

21 MR. SKUNKCAP: Opposed.

22 MR. LIVERS: Joe.

23 CHAIRMAN RUSSELL: Aye.

24 MR. LIVERS: All right, the motion passes 5 to 2.

25 CHAIRMAN RUSSELL: All right, thank you.

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1 Two things we need to do. Based on the fact that we
2 are in session, is there anyone who would like to address
3 the Board on any matter that pertains to the business of
4 the Board at this time? And then everyone else on the
5 board should get their calendars ready for trying to
6 figure out a time we can talk on Monday.

7 Is there anyone who like to address the Board on
8 general matters?

9 MR. LIVERS: Doesn't appear to be anyone here.

10 CHAIRMAN RUSSELL: Bill.

11 MR. ROSSBACH: I would like to follow up. And I
12 very much appreciate Robin's -- I, too, have a great
13 concern about the differential with lignite. I think
14 anybody who has talked to me about that knows that. I
15 guess what I would like to do is put somewhere on our
16 calendars for the future some serious long-term research
17 into -- you know, maybe target it 18 months from now, an
18 update by the Department on where lignite research is.
19 Because I don't want to let this thing go thinking that
20 we're done with lignites, thinking we're done with
21 mercury. And I don't know how to go about doing that, and
22 maybe it's not appropriate now, but I want to say that
23 during my tenure on this board -- and who knows how long
24 that would be -- I really fully expect that we get a
25 report back or we do some investigation further and

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1 consider further amendments.

2 MR. LIVERS: Mr. Chairman, Mr. Rossbach, this is
3 Tom. I've made that note, and at a minimum, we'll have
4 that as a flag for future -- a future board item. We'll
5 take that comment in the spirit and toss it around and
6 come back in a couple of meetings maybe with some
7 recommendations on how we might best meet what you're
8 looking for there.

9 MR. ROSSBACH: Thank you.

10 MS. SHROPSHIRE: Thanks, Bill, I appreciate that.

11 CHAIRMAN RUSSELL: Well, good. No one said
12 anything about putting, codifying how BACT is applied,
13 but --

14 MR. ROSSBACH: We'll do that, too. I'll
15 appreciate -- I'll ask Tom have that as part of the
16 agenda, too.

17 MR. LIVERS: Done.

18 CHAIRMAN RUSSELL: Monday, when would it be --
19 Let's first throw something out that makes some sense.
20 How about noon?

21 MS. SHROPSHIRE: This is Robin. Noon works for
22 me as long as it's short.

23 CHAIRMAN RUSSELL: Shouldn't take long.

24 MR. SKUNCAP: Mr. Chairman, this is Gayle. I'm
25 going to be unable to make it on Monday.

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1 CHAIRMAN RUSSELL: We just need a quorum, Gayle,
2 if that's all right with you.

3 MR. SKUNKCAP: I guess it's got to be. I've
4 already made arrangements for Phoenix and I'll be in the
5 air.

6 MR. LIVERS: Although if it's possible to find a
7 time where you would be able to patch in, that's another
8 option, too.

9 MS. LACEY: Is there another time than noon?

10 CHAIRMAN RUSSELL: Are you going through
11 Minneapolis?

12 MR. SKUNKCAP: Denver.

13 MR. MARBLE: What are we going to do, again, on
14 Monday?

15 CHAIRMAN RUSSELL: We're just going to adopt the
16 Department's responses to comments, the 521 and 311
17 analysis.

18 MR. MARBLE: So, I mean, there's nothing really
19 very controversial?

20 CHAIRMAN RUSSELL: Shouldn't be.

21 MR. LIVERS: It should be pretty straightforward.
22 I won't say anything about this rule is non-controversial,
23 but I think in this meeting and the previous one, I think
24 we've really hit the substantive issues head-on, so this
25 really should be pretty mechanical.

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1 CHAIRMAN RUSSELL: Mercurial.

2 How about noon, then, Gayle, if you don't mind? Let's
3 just make sure whoever else is available. If we can't get
4 a quorum, then let's look at another time. Noon, Bill?

5 MR. ROSSBACH: Yes.

6 CHAIRMAN RUSSELL: Gayle? Heidi?

7 MS. KAISER: Noon works for me.

8 CHAIRMAN RUSSELL: Or Gayle is out.

9 Kim?

10 MS. LACEY: Yes.

11 CHAIRMAN RUSSELL: Don?

12 MR. MARBLE: Yes.

13 CHAIRMAN RUSSELL: Let's shoot for noon, then.

14 MR. LIVERS: Okay. We'll set it up, get all of
15 the information. And our target, which has to be a pretty
16 firm target to give you guys any time to review the
17 changes, which I think will be relatively minimal, but the
18 changes in the BACT, we'll try to shoot this out Friday so
19 that you have the weekend to look at that.

20 CHAIRMAN RUSSELL: That would be good.

21 MR. LIVERS: If we can get it out sooner, we
22 will, but that's pretty aggressive on our end, but that at
23 least will give you the weekend.

24 MS. SHROPSHIRE: As late on Friday as possible.

25 CHAIRMAN RUSSELL: Anything else?

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1 RECORDING: Your conference call will end in
2 10 minutes. To extend conference duration by 15 minutes,
3 press star-98.

4 CHAIRMAN RUSSELL: -- travel schedule.
5 Anything else?

6 MS. LACEY: This is Kim. Do you have any
7 particulars that you can e-mail us on that hearing in
8 Gallatin Gateway yet?

9 MR. LIVERS: We don't, but as soon as we get it,
10 we'll get it out there. I think what we're looking at is
11 I believe we're doing an afternoon and evening session.
12 So, Kim, we'd probably fly you in here that morning, and
13 then I anticipate we'd be driving vans back to Helena that
14 night and spending the night here.

15 MS. LACEY: Oh, okay. Yeah, let me know, because
16 I was intending to go to Bozeman driving from here.

17 MR. LIVERS: Oh, okay.

18 MS. LACEY: That's okay.

19 MR. LIVERS: We were just making assumptions you
20 would want to fly down. But we'll certainly -- I mean,
21 basically what we're looking at is -- to accommodate
22 public comment, to facilitate it, we're looking at
23 probably starting mid-afternoon and continuing into the
24 evening. And then at least those who are coming this
25 direction would probably head back to Helena afterward

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1 that night.

2 MS. LACEY: Do we have a day? Is that the 25th?

3 MR. LIVERS: Yeah, it's October 25th.

4 MS. LACEY: Okay.

5 CHAIRMAN RUSSELL: Anything else?

6 MR. SKUNKCAP: Where is that at?

7 MR. LIVERS: That's in Gallatin Gateway, and it's
8 a public hearing on the Gallatin outstanding resource
9 water petition and board initiation and the EIS associated
10 with that.

11 MR. SKUNKCAP: What time is that going to be?

12 MR. LIVERS: We don't have a specific start time
13 at this point, but we're looking at a mid-afternoon start
14 and then continuing -- probably 3 o'clock start. I guess
15 it is noticed at 3 o'clock, and it will continue into the
16 evening.

17 MR. SKUNKCAP: Okay.

18 CHAIRMAN RUSSELL: Well, we'll expect to see some
19 information on that coming from you and Joyce.

20 And, you know, it's really hard to conduct meetings
21 via teleconference. I thought we did a good job today,
22 especially a very orderly process, and dealt with some
23 substantive issues. So good work and thank you,
24 Department, for all your work on this.

25 Do I have a motion to adjourn?

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1 MR. SKUNKCAP: Before the motion, Mr. Chairman,
2 how many people went on the site tour for the
3 Landusky-Zortman tour?

4 CHAIRMAN RUSSELL: There were five of us that
5 left Helena.

6 MR. LIVERS: Yes. Mr. Chairman, Mr. Skunkcap,
7 three board members were able to make it.

8 MR. SKUNKCAP: Who were they?

9 MR. LIVERS: Chairman Russell, Ms. Shropshire,
10 Ms. Kaiser. And then Director Oppen and I both went. The
11 head of the Permitting Division, Steve Welch, was there;
12 the head of the Environmental Management Bureau,
13 Warren McCullough; and then our site manager,
14 Wayne Jepson, was there, as well.

15 MR. SKUNKCAP: Thank you. Motion to adjourn.

16 CHAIRMAN RUSSELL: Do I have a second?

17 MS. SHROPSHIRE: Second.

18 CHAIRMAN RUSSELL: All in favor.

19 (Vote taken.)

20 CHAIRMAN RUSSELL: All right. We'll see you in
21 two weeks and we'll talk to you next Monday.

22 (The proceedings were concluded at 2:22 p.m.)

23 * * * * *

24

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COURT REPORTER'S CERTIFICATE

STATE OF MONTANA)
 ss.
COUNTY OF LEWIS AND CLARK)

I, CHERYL ROMSA, Court Reporter, Notary Public in
and for the County of Lewis and Clark, State of Montana,
do hereby certify:

That the foregoing proceedings were reported by
me in shorthand and later transcribed into typewriting;
and that the -90- pages contain a true record of the
proceedings to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my notarial seal this 6th day of November
2006.

CHERYL A. ROMSA
Court Reporter - Notary Public
My Commission Expires 8/4/2007

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